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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

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UNITED STATES OF AMERICA,  
Plaintiff,

vs.

2014 JEEP GRAND CHEROKEE,  
VIN: 1C4RJFDJ4EC309681,

Defendant *in Rem*.

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DAVID MIRAMONTES,

Claimant.

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**REPORT AND RECOMMENDATION  
TO STRIKE CLAIM AND CROSS  
CLAIM OF DAVID MIRAMONTES**

Case No. 2:16-cv-1145-CW-BCW

District Judge Clark Waddoups

Magistrate Judge Brooke C. Wells

This matter is before the Court on the Government's Motion to Strike Claim and Cross Claim of David Miramontes ("Motion").<sup>1</sup> Claimant has not filed a response to the Motion. District Judge Clark Waddoups referred this matter to Magistrate Brooke Wells pursuant to 28 U.S.C. § 636(b)(1)(B).<sup>2</sup>

On September 5, 2017, this Court issued an Order clarifying the record and allowing Claimant an additional thirty (30) days to respond to the Government's Amended Complaint. On September 20, 2017, the Order which was mailed to Claimant on September 5, 2017,<sup>3</sup> was returned to the Clerk's Office as undeliverable.<sup>4</sup> Using the Bureau of Prisons inmate locator, the Clerk's Office determined that Claimant had been moved to Florence FCI. The Clerk's Office

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<sup>1</sup> Docket no. 16.

<sup>2</sup> Docket no. 8.

<sup>3</sup> The Order was mailed to Claimant at Beaumont which was the address on file with the Court.

<sup>4</sup> Docket no. 18.

forwarded the Court's September 5, 2017 Order to Claimant at Florence FCI on September 20, 2017.<sup>5</sup> The Order, which was sent to Claimant at Florence FCI, has not been returned to the court as undeliverable.

Nearly two months have passed since the Order was resent to Claimant. Claimant has had well over thirty (30) days to file a response to the Government's Amended Complaint, and has not done so. Further, Claimant failed to file a response to the Government's Motion now before the Court. Under FRCP, Supp. R. G(5)(a) and (b), a Claimant must file both a claim and an answer to the complaint. Here, despite being given an additional opportunity to comply with this rule, Claimant has failed to file an answer to the Government's Complaint and Amended Complaint. Thus, pursuant to Rule G(8)(c)(i), the Motion is properly before the Court based on Claimant's failure to follow Rule G(5).

Accordingly, based on the government's Motion to Strike Claim and Cross Claim of David Miramontes, and good cause appearing;

IT IS HEREBY RECOMMENDED that the United States' Motion to Strike the Claim and Cross Claim of David Miramontes be GRANTED;

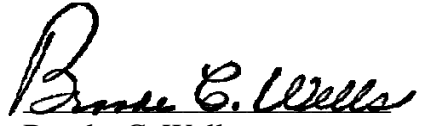
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<sup>5</sup> Docket no. 18.

IT IS FURTHER RECOMMENDED, pursuant to Fed. R. Civ. P., Supp. R. G(8)(c)(i)(A) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, that the Claim and Cross Claim of David Miramontes (Doc. 4 and Doc. 5) be STRICKEN and dismissed from this case.

SO ORDERED this 13th day of November, 2017.

BY THE COURT:

  
Brooke C. Wells  
United States Magistrate Judge

#### NOTICE

The Court will send copies of this Report and Recommendation to all parties, who are hereby notified of their right to object.<sup>6</sup> The parties must file any objection to this Report and Recommendation within fourteen (14) days of service thereof.<sup>7</sup> Failure to object may constitute waiver of the objections upon subsequent review.

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<sup>6</sup> See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

<sup>7</sup> *Id.*